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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

VINCENT P.,

Petitioner,

v.

THE SUPERIOR COURT OF THE
COUNTY OF SAN BERNARDINO,

Respondent;

SAN BERNARDINO COUNTY
DEPARTMENT OF CHILDREN'S
SERVICES,

Real Party in Interest.

E035953

(Super.Ct.Nos. J170600, J170601)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. A. Rex Victor,
Judge. Petition denied.

Maria G. Niciforos for Petitioner.

No appearance for Respondent.

Ronald D. Reitz, County Counsel, and Joanne Fenton, Deputy County Counsel,
for Real Party in Interest.

Petitioner Vincent P., the father of D. P. and J. P.,¹ filed this writ petition pursuant to California Rules of Court, rule 39.1B, challenging an order setting a Welfare and Institutions Code section 366.26² permanency planning hearing as to the children. Father contends (1) the trial court erred in finding a substantial risk of detriment existed to the minors if they were returned to his care and (2) the reunification services provided were inadequate and thus wrongfully terminated. As discussed below, we deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

On August 4, 2000, the San Bernardino County Department of Children's Services (department) filed section 300 petitions on behalf of D. P. and J. P. after they sustained injuries and were removed from their parents' custody. Following a hearing on October 3, 2000, the parties stipulated to, and the juvenile court found that J. P. sustained an epidural hematoma as a result of father's neglectful acts or omissions, the parents suffered from a history of drug abuse which impaired their ability to care for the children, and the parents failed to seek medical attention for D. P.'s eye disorder. The children were declared dependents and reunification services were ordered.

On June 21, father's reunification services were terminated, the children were continued as dependents, and father was granted supervised visitation twice monthly.

¹ D. P. was born in August 1998 and J. P. was born in August 1999.

After a section 387 petition was granted removing the children from their mother and terminating her services on March 17, 2003, a section 366.26 hearing was set for July 14, 2003. This court denied mother's writ petition in case No. E033361 on May 22, 2003.³ We rejected her appeal in case No. E033400 on October 21, 2003, and she is not a party to this proceeding.

Father did not file a section 39.1B writ petition, but before the scheduled section 366.26 hearing was held, he filed a section 388 petition, alleging he had been drug free for two years; he had been in a stable familial relationship since July 2002; he had completed a parenting class and was enrolled in counseling and a substance abuse program; he was employed; he had visited the children regularly and developed a loving relationship with them; and he acknowledged responsibility for his past behavior.

Following a contested hearing, the juvenile court partially granted father's section 388 petition. The court ordered random drug-testing, supervised visitation and mediation to structure a six-month transition reunification plan. The mediation agreement provided for a progressive visitation schedule, random drug testing of father, his ongoing counseling with Phil Allen, MFT, and a transfer of the children to father's home by November 26, 2003.

[footnote continued from previous page]

² All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

³ On the court's own motion, the record in case No. E033361 is incorporated in the record in case No. E035953.

On July 25, 2003, the juvenile court ordered the children to be transitioned into full custody with father under family maintenance by approval packet pursuant to the mediation agreement. The court also ordered the section 366.26 hearing off calendar and scheduled an 18-month review (§ 366.22) hearing for January 27, 2004.

On September 29, 2003, the juvenile court ordered a reduction of visitation to twice weekly for an hour and a half under supervision because D. P. was acting out in school and having increased incidents of encopresis.⁴ The court approved a change in treatment to assist the family in the reunification process because Phil Allen, MFT, father's therapist, was not available in the home as much as previously believed, he was not working on parenting issues, he had no intention of working with the department in a partnership with the family, and he did not provide a report to the court for the nonappearance review. When the social worker explained the September 29 visitation changes to father, he became enraged at the social worker and yelled at the visit supervisor.

During the period of unsupervised visitation from August 29 to October 2, 2003, D. P. experienced 19 incidents of encopresis and seven behavioral incidents at school. His teacher reported he exhibited poor self-control as he was hitting and spitting on others and was unable to focus and do his work. The social worker recommended suspending visitation until the children received appropriate evaluation and treatment.

⁴ "The involuntary discharge of feces; the soiling of bedclothes by an incontinent patient. . . ." (2 Schmidt, Attorneys' Dict. of Medicine (1992) p. E-79.)

On October 3, 2003, visits were suspended so D. P.'s behavior could be stabilized and both children could receive intensive behavioral and medical therapy.

On October 9, 2003, the court ordered the visits suspended on the recommendation of the placement assessment and stabilization team based on the encopresis and behavioral incidents and father's continued struggles with anger management.

Following a contested visitation hearing on November 13, 2003, the juvenile court ordered resumption of father's supervised visits, conjoint counseling for father and D. P., and a medical exam for D. P. D. P.'s exam showed him to be healthy and normal.

On December 17, 2003, the juvenile court ordered the continuance of supervised visitation, but authorized the social worker to liberalize visitation to unsupervised visits if appropriate. The court also ordered father to participate in therapeutic sessions deemed appropriate by his therapist, and confirmed the 18-month review hearing scheduled for January 27, 2004.

In January 2004, the social worker recommended a continuance of the transition plan for 90 days. From November 13, 2003, father continued regular visitation, attended the biofeedback sessions with D. P., paid off fines and secured a driving permit, but he was seeking work because his hours at Dominos Pizza had been reduced. He continued to receive support services in the home from Phil Allen, MFT. He had successfully drug tested and had been cooperative with staff at the neurofeedback sessions. He regularly brought food and toys to visits and demonstrated appropriate techniques to direct the

children's behavior. They looked forward to his visits. He was working very hard on his transition plan, his behavioral concerns had subsided and he was clearly invested in the return of the children to his home.

In addendum reports, the social worker recommended continuing the transition schedule. Father had received his interim driver's license. His therapist, Phil Allen, MFT, noted he was growing in his sense of responsibility. His outbursts had decreased, but he overreacted when J. P. referred to her foster father as "Daddy."

On April 8, 2004, the juvenile court suspended the children's transition into father's home because circumstances indicated "the children would be at imminent risk." Following a visit on March 19, 2004, D. P. required asthma treatment and coughed extensively through the night. The children reported that father and his fiancée had smoked in the home. D. P. had encopresis the next day and both children were sick with colds. At the March 22 visit, their mother and her sister were present at their paternal grandmother's home. The children said they were allowed to ride off-road in a Jeep without car seats or seatbelts and to steer the Jeep while sitting on their grandmother's lap. During a weekend visit, the frames of both children's eyeglasses were broken and father did not have D. P. wear his eyepatch. On a scheduled inspection on April 6, 2004, the home smelled of animal urine and there were eight to ten large uncollected bags of garbage. An unrelated female adult with an open department case and a history of recent drug use was living in father's home.

Carole Voll, MFT, the children's therapist, was concerned about father's unrealistic expectations of them. He had not reviewed information she assigned him about the children's developmental stages because he was "too tired and busy." His reactions to her observations were defensive and he continued to have issues with anger. She believed D. P.'s encopresis may have been triggered and related to anxiety about his father. She reported father had disregarded guidelines set by the court as evidenced by allowing the children to have unauthorized contact with their mother and telling the children to keep the visits secret. Father's credibility with her had been damaged and she recommended against further conjoint counseling.

Father told the social worker that he intended to change the children's therapist when they returned to his care so the department would not be involved. Father's therapist, Phil Allen, MFT, acknowledged to the social worker that father had been dishonest, made poor decisions and lacked good judgment regarding the visit at the grandmother's home, but opined the children would not be in imminent danger if returned to him. The therapist would be overseeing the family to ensure the children's physical and emotional needs were met.

D. P. and J. P. were happy in their foster placement and had made conflicting statements to their therapist, foster mother and social worker regarding their placement wishes. The social worker believed the family was a high risk for abuse and neglect because of the children's special needs, father's marginal living situations, his history of

poor impulse control, his dishonesty and resistance to parenting guidance, and his failure to make adequate progress to complete the transition plan.

An addendum report filed on May 13, 2004, stated father had a negative drug test in April. During a discussion of the recommendation for suspending transition to his home, he told the social worker that she had lied about him and he wanted to move to Arizona after the children were returned to him. He missed the visits scheduled for May 5 and May 10 because his car broke down.

At the hearing held on May 19, 2004, father testified his wife's friend Jessica had stayed with them one night and he did not know she had an open case with the department. Some of her things were stored in the children's bedroom, but she was no longer visiting. He was working 20 to 25 hours a week at Papa John's Pizza. He had worked at Papa John's four or five months and had worked for Dominoes seven months. He was waiting for his driver's license. He knew D. P. had asthma. He was in the process of quitting smoking and he did not smoke inside his house. His mother also smoked outside when she visited. He intended to keep the children in counseling, but his counselor was trying to locate someone closer. He had lost his temper with the social worker and had raised his voice, but he had not yelled. He still had issues controlling his anger, but he had learned techniques to keep it under control and he had not been violent within the last year. The children's mother was not present the day they rode in the Jeep; they call his mother, who was present, "mom." During the Jeep ride, the children were in the front seat with seatbelts when they rode around in circles at about two miles per hour

in his mother's backyard. He suggested secrecy about the Jeep ride because the children were in seatbelts, not car seats, and he knew that was wrong. He made a mistake. He always used car seats for them. He has two dogs and an outdoor cat. The urine smell in the house was from cats the previous tenant kept indoors. He had been trying to eliminate the odor. He admitted he "popped" his youngest son on his diaper because the child had thrown something at D. P. and bloodied his nose a bit. Father did it to get the child's attention. He does not hit D. P. and J. P. He puts them in a corner for time-out. He knows that D. P. has ADD. He had ADD when he was younger, but he worked through it. He had information on ADD and was reading it so he could work with D. P. on the problem. He would probably agree to medication except for Ritalin, but believed there were alternatives to having his son "drugged up all the time." From conjoint therapy, he had learned the children were growing and it would "be a hard trip with them." He had been reading about their emotional states and what was age appropriate for them. He did not like the things the social worker told him, so he changed his tone of voice. No eyepatches were sent along for D. P., but his fiancée located a place to buy them and he paid \$20 for 10 eyepatches. He wanted to keep D. P. in the neurofeedback program because he could see it helped improve his concentration. Father would pay for the program if necessary. He was attending therapy weekly and found it beneficial. He had visited the children twice weekly for seven hours until a recent change to two hours because of their school. He had them for two weekends and enjoyed every minute of it.

He believed his children loved him very much and they told him they wanted to live with him. They greeted him with hugs and kisses.

The social worker testified she had concerns about father's ability to control his anger. On April 26, he had spoken loudly, forcefully and yelled at her, but then he composed himself. She had seen him raise his voice with the children. She was concerned about the children's glasses being broken and D. P.'s eye not being patched. She also had questions about nutrition. She questioned father's ability to maintain progress and stability and to meet the children's special needs over time. The children were doing well in their foster home and were bonded to the caretakers, who wanted to adopt them. Father appeared to love his children, but he was somewhat sharp or harsh when he thought they were doing something wrong. They appeared happy to see him, would go to him and give him hugs. They did not appear afraid of him.

Stating it considered credibility in making its determination, the juvenile court found the case "troubling" because after the services were resumed on the section 388 petition, "it seem[ed] like it's a process of two steps forward and one step back" The court found it "very disturbing" in view of D. P.'s eye problem that father did not attend to his eyepatch and that the eyeglasses of both children were broken by father's younger son. In the court's view, both findings indicated father failed to appreciate the detriment caused D. P. Also, D. P.'s recurring asthma attacks following visitation were concerning. And, the court did not believe that father would continue the children's therapy.

The juvenile court found by clear and convincing evidence that custody by father continued to be detrimental to the children, their best interests and welfare required that custody continue to be taken from him, and return of the children would create substantial risk of detriment to them. The court further found that while father participated regularly, he made only moderate and not substantive progress in the court-ordered treatment plan towards alleviating the causes necessitating placement, that the department made reasonable efforts to safely return the children, but there was not a substantial probability that the children could be returned to father within the statutory time frame. The court terminated services and set a section 366.26 hearing for September 21, 2004.

DISCUSSION

Father seeks review of the juvenile court's order, arguing the court erred in finding that return of the children would create a substantial risk of detriment to them and that reasonable services had been provided. The record does not support his claims.

In reviewing the reasonableness of the reunification services, we recognize that in most cases more services might have been provided and the services provided are often imperfect. The standard is not whether the services provided were the best that might have been provided, but whether they were reasonable under the circumstances. (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.) A court-ordered reunification plan must be tailored to fit the circumstances of each family and designed to eliminate the

conditions that led to the juvenile court's jurisdictional finding. (*In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777.)

The record in this case, set out above, reveals the services offered were reasonable -- they were tailored to fit the circumstances and to eliminate the conditions that led to the juvenile court's jurisdictional finding -- and father consented to them. The children were removed from father's custody because his drug abuse impaired his ability to care for them, his neglectful acts caused J. P. to sustain injuries, and he failed to seek medical attention for D. P.'s eye disorder.

The services afforded father after his section 388 petition was partially granted included random drug testing, ongoing counseling with Phil Allen, MFT, conjoint counseling with the children, a progressive visitation schedule, and a transfer of the children to father's home within six months. Thus, the services offered were reasonably geared to overcoming the problems that caused the dependency and were appropriate under the circumstances. (See *In re Jasmon O.* (1994) 8 Cal.4th 398, 424-425; *In re Christina L.* (1992) 3 Cal.App.4th 404, 417.)

Father argues the services were unreasonable because D. P. was not assisted soon enough in overcoming his behavioral problems and conjoint therapy did not start until March 31, 2004. However, D. P.'s problems had diminished until he began unsupervised visits with father and when his problems escalated, he was given a thorough medical examination and therapy. Conjoint therapy was based on the therapist's judgment as to

when D. P. would be ready and father is in no position to complain that it was ineffective since he participated half-heartedly.

Furthermore, by consenting and failing to object to the reunification service plan ordered by the juvenile court and implemented by the social worker, father waived his claims regarding any inadequacy in the services offered. (*In re Precious J.* (1996) 42 Cal.App.4th 1463, 1476; *In re Christina L.*, *supra*, 3 Cal.App.4th at p. 416.)

In these circumstances, substantial evidence supports the juvenile court's finding that the reunification services offered to father were reasonable and the court did not abuse its discretion.

Nor did the juvenile court abuse its discretion in terminating the services. Section 366.21, subdivision (e), requires the juvenile court to return a dependent child to parental custody at the six-month review hearing "unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent . . . would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." Here, the evidence established that father did not attend to D. P.'s eyepatch, that he smoked and allowed other smokers around D. P. despite D. P.'s asthma, that the eyeglasses of both children were broken by father's younger son during one of their unsupervised visits with him, and that father admitted raising his voice when he lost his temper with the social worker. Thus, father failed to treat D. P.'s critical medical needs seriously, he lacked control of his younger son, and he still had anger outbursts, although he had made progress in anger control. He was uncooperative with the social worker and

the children's therapist and he was encouraging the children to be secretive and uncooperative with the professionals who were trying to assist the family. All of these factors, as well as the credibility of the witnesses, was thoughtfully considered by the juvenile court, which acted well within its discretion, on substantial evidence.

DISPOSITION

The petition is denied.

NOT FOR PUBLICATION

HOLLENHORST

Acting P. J.

We concur:

WARD

J.

KING

J.